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No. 03-1589

IN THE

Supreme Court of the United States

ELIOT SPITZER, Attorney General of the State of New York,

Petitioner,

v.

ANGEL L. MATEO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

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[FORMER CAPITAL CASE]

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QUESTION PRESENTED

Whether this Court's decision in *United States v. Jackson*, 390 U.S. 570 (1968), which held that it is unconstitutional to offer a defendant a benefit to plead guilty and waive his right to a jury trial, has been so undermined by subsequent decisions holding that plea agreements, even in capital cases, are both a constitutional and a desirable attribute of the criminal justice system, that it should be expressly overruled.

PARTIES TO THE PROCEEDING

THE STATE OF NEW YORK was the Respondent in the courts below and is the petitioner in this Court. ELIOT SPITZER, the Attorney General of the State of New York, was an Intervenor in the New York Court of Appeals. MICHAEL C. GREEN, the District Attorney of Monroe County, was a respondent below and is a respondent in this Court. ANGEL L. MATEO was the plaintiff below and is a respondent in this Court.

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Appendix B — *People v. Angel Mateo*, (Unreported) (N.Y. Co. Ct., Monroe County, Aug. 25, 1997) (Excerpted Portion) 103a

OPINIONS BELOW

The opinion of the New York Court of Appeals in *People v. Mateo* is so far unreported. It is reprinted in Appendix A. A portion of the unpublished decision and order of County Court Judge John J. Connell, dated August 25, 1997, is reprinted in Appendix B.

STATEMENT OF JURISDICTION

The judgment of the New York Court of Appeals was entered on February 24, 2004. This petition is being filed within ninety days of that date. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fifth Amendment, provides:

> No person . . . shall be compelled in any criminal case to be a witness against himself. . . .

United States Constitution, Sixth Amendment, provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . .

STATUTORY PROVISIONS INVOLVED

N.Y. Crim. Proc. Law § 220.10. *Plea; kinds of pleas*, provides:

> The only kinds of pleas which may be entered to an indictment are those specified in this section:
>
> * * *
>
> 5. (e) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment without parole or a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole.

N.Y. Crim. Proc. Law § 220.30. *Plea; plea of guilty to part of indictment; plea covering other indictments*, provides:

> 3. (b)(vii) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment without parole or a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole.

STATEMENT OF THE CASE

A. Introduction

On September 1, 1995, New York reinstated the death penalty for the crime of Murder in the First Degree as defined in N.Y. Penal Law § 125.27 (McKinney's 1998). This statute does not permit imposition of a death sentence following a guilty plea. As a result, defendants charged with Murder in the First Degree who were otherwise eligible to receive a death sentence faced different maximum sentences depending on whether they were convicted upon a guilty plea or following a jury trial. If convicted upon a guilty plea, a defendant faced a maximum sentence of life without the possibility of parole, while a defendant who was convicted after trial faced a sentence of death.

B. Facts and Procedural History

On November 2, 1996, in the City of Rochester, County of Monroe, State of New York, Angel Mateo kidnaped and killed Juan Rodriguez-Matos. On December 19, 1996, Mateo was indicted for, among other things, Murder in the First Degree in violation of N.Y. Penal Law § 125.27(1)(a)(vii). On January 17, 1997, the Monroe County District Attorney filed notice, pursuant to N.Y. Crim. Proc. Law § 250.40(2), of his intention to seek the death penalty in the event that Mateo was convicted of first-degree murder.

Mateo's attorneys filed a motion asking the trial judge to declare N.Y. Crim. Proc. Law §§ 220.10(5)(e), 220.30(3)(b)(vii), and 220.60(2)(a) unconstitutional under *United States v. Jackson*, 390 U.S. 570 (1968). In *Jackson*, this Court struck down the death penalty provision of the

Federal Kidnaping Act, under which the death penalty could be imposed only after conviction at a jury trial, but not following a bench trial or upon a guilty plea. According to the Court, this statutory sentencing disparity "imposed an impermissible burden" on the exercise of Fifth and Sixth Amendment rights by defendants who sought a jury trial, and "needlessly encouraged" defendants to waive these rights. *Id.* at 583.

On August 25, 1997, Judge John J. Connell, in an unpublished decision and order, determined that the challenged provisions of the Criminal Procedure Law were unconstitutional under *United States v. Jackson* (Appendix B). The court nonetheless denied Mateo's motion to strike the death penalty as unconstitutional, determining instead that the first-degree murder guilty plea provisions were severable. Under the resulting statute, "there is now no provision for the defendant to enter a plea of guilty in this death eligible case." Accordingly, there was no violation of *United States v. Jackson* because a death-eligible defendant charged with first-degree murder faced the single maximum punishment of death (Appendix B at 105a).

On December 24, 1997, Howard Relin, then the District Attorney of Monroe County, State of New York, moved in the New York Supreme Court, Appellate Division, Fourth Department, for a writ of prohibition enjoining Judge Connell from enforcing that portion of the August 25, 1997 order that had declared the capital murder guilty plea provisions unconstitutional. In the alternative, the District Attorney moved for a declaratory judgment, pursuant to N.Y. Civ. Prac. L. & R. Article 30, declaring the capital guilty plea provisions constitutional.

In a decision and judgment dated June 10, 1998, the Appellate Division, Fourth Department, converted the District Attorney's prohibition proceeding into a declaratory judgment action, and unanimously declared the capital murder guilty plea provisions constitutional. *Matter of Relin v. Connell*, 674 N.Y.S.2d 192 (4th Dep't 1998). The court determined that the challenged provisions did not needlessly encourage guilty pleas in capital cases, because they did not give capital defendants the unilateral right to plead guilty in order to avoid the death penalty. 674 N.Y.S.2d at 193.

The New York Court of Appeals subsequently determined that the Fourth Department's decision was appealable as of right, and consolidated the appeal with a separate appeal in *Matter of Hynes v. Tomei*, 666 N.Y.S.2d 687 (2d Dep't 1997), in which the New York Supreme Court, Appellate Division, Second Department, had similarly declared that the capital murder plea provisions were constitutional.

While these appeals were pending, Mateo proceeded to trial in the Supreme Court, Monroe County. He was found guilty of first-degree murder on December 3, 1998. The penalty trial began on December 10, 1998. The jury returned a sentence of death on December 16, 1998.

Six days later, on December 22, 1998, the New York Court of Appeals reversed the judgments in both *Matter of Relin v. Connell* and *Matter of Hynes v. Tomei*, declaring that two of the capital murder guilty plea provisions, N.Y. Crim. Proc. Law §§ 220.10(5)(e) and 220.30(3)(b)(vii), were unconstitutional under *United States v. Jackson*, 390 U.S. 570 (1968), because they explicitly created "two levels of penalty for the same offense, imposing death only on those who assert innocence and proceed to trial." *Matter of Hynes v. Tomei*, 706 N.E.2d 1201, 1203 (1998).

Although the New York Court of Appeals based its decision solely on this Court's thirty-year-old decision in *United States v. Jackson*, it recognized that this Court might decide the issue differently today: "We are also aware that the Supreme Court has not revisited *Jackson* and its progeny in 20 years, and that these cases might be decided differently today in light of the increased significance of plea bargaining and substantial changes in the administration of capital punishment." *Matter of Hynes v. Tomei*, 706 N.E.2d at 1209. Nonetheless, the Court stated that it was "bound under the Federal Constitution to follow controlling Supreme Court precedent" and that *United States v. Jackson* compelled the invalidation of the capital murder guilty plea provisions. *Id.*

The petitioning District Attorneys and the Attorney General for the State of New York, who had intervened before the Court of Appeals pursuant to N.Y. Executive Law § 71 to uphold the constitutionality of the statute, filed a petition for a writ of *certiorari* in *Hynes*, arguing that this Court should revisit *United States v. Jackson*. The petition was denied on June 14, 1999. *Hynes v. Tomei*, 527 U.S. 1015 (1999).

Angel Mateo subsequently appealed his death sentence to the New York Court of Appeals, arguing, among other things, that because he proceeded to trial before the date on which the unconstitutional capital murder plea provisions were stricken, his Fifth and Sixth Amendment rights were impermissibly burdened, and his death sentence should be vacated. In a decision and order entered on February 24, 2004, the New York Court of Appeals agreed, and modified his conviction by vacating his death sentence; the court otherwise affirmed his conviction. *People v. Mateo*, __ N.E.2d __ (2004) (Appendix A).

REASON FOR GRANTING THE PETITION

The rationale of this Court's decision in *United States v. Jackson* has been so undermined by subsequent decisions upholding plea bargaining, even in capital cases, that *Jackson* is obsolete and should be expressly overruled.

In *Matter of Hynes v. Tomei*, 706 N.E.2d 1201 (1998), the New York Court of Appeals explicitly recognized that the passage of time, coupled with a "sea change in plea bargaining" (*id.* at 1203), had called into question the continuing validity of this Court's decision in *United States v. Jackson*. But because *Jackson* had never been formally overruled, the state court felt bound to follow it. As a result of its decision to invalidate the statutory guilty plea provisions, Angel Mateo's death sentence was reversed.

The Court of Appeals was correct in questioning the continuing validity of *Jackson*. The Court's holding in that case is irreconcilable with later decisions that have upheld the propriety of plea bargaining in both capital and non-capital cases, even though any plea agreement inevitably burdens a defendant's exercise of his or her trial rights. Because *Jackson* has not withstood the test of time, but its continued existence has undermined the State of New York's reinstatement of capital punishment, this Court should grant *certiorari* so that *Jackson* can be formally overruled or otherwise expressly limited.

In *Jackson*, this Court invalidated that part of the Federal Kidnaping Act (18 U.S.C. § 1201(1)) that provided for different sentences for defendants who were convicted following a jury trial and those who were convicted after a guilty plea or a bench trial. After a jury verdict of guilty, a

defendant automatically faced and could receive a death sentence if the jury so recommended, whereas a defendant who either pled guilty or was tried by the court without a jury could not receive a death sentence. 390 U.S. at 570-71.

This statute was deemed unconstitutional because its "inevitable effect" was to "discourage assertion of the Fifth Amendment right not to plead guilty and to deter exercise of the Sixth Amendment right to demand a jury trial." *Id.* at 581-83. What troubled the Court was that the statute offered a defendant a reduced sentence in exchange for his or her guilty plea. This trade-off was impermissible, the Court said, because it placed a burden on the exercise of constitutional rights. The "evil in the federal statute" was not necessarily that it coerced guilty pleas and jury waivers, but simply that it "needlessly encourage[d] them." *Id.*

Of course, the same effect is "inevitable" whenever the government offers a defendant a reduced sentence during plea negotiations. The price of rejecting the plea bargain is that the defendant may face a more severe sentence if he or she exercises the Fifth and Sixth Amendment rights to a trial and to remain silent and is subsequently convicted. But as explained below, the Court's modern jurisprudence now recognizes the constitutionality of plea bargaining, and the central premise of the *Jackson* decision is thus inconsistent with current law.

The *Jackson* Court did not explain how its ruling would affect plea bargaining, and the pressures that may legitimately be applied in order to induce a defendant to waive his or her trial rights. Shortly after *Jackson*, however, the Court openly recognized the benefits of plea bargains. Thus, in *Brady v.*

United States, 397 U.S. 742, 751-53 (1970), the Court recognized that the entry of guilty pleas to avoid the potential negative consequences of a trial are "inherent in the criminal law" and provide significant advantages to both the State and the defendant, including the hope or the assurance of a lesser penalty than might be imposed after a jury's guilty verdict. And in *Santobello v. New York*, 404 U.S. 257, 260-61 (1971), the Court declared that properly-administered plea bargaining was to be "encouraged" as an "essential" and "desirable" component of the justice system. The Court's "open acknowledgment of this previously clandestine practice" of plea bargaining was a fundamental change from *Jackson*. *See Bordenkircher v. Hayes*, 434 U.S. 357, 361-62 (1978).

The Court began to abandon *Jackson* in other ways as well. It started to move away from the underlying assumption of *Jackson* -- that a statutory scheme that "discouraged" the exercise of trial rights was unconstitutional. In *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973), the Court recognized that if a plea bargain is to be accepted by a defendant, it must naturally include some benefit that the defendant would not receive if he or she proceeded to trial. By its nature, this plea offer would discourage the defendant from exercising the constitutional right to trial. The Court held in *Chaffin* that such an outcome does not offend the constitution, and that the constitution does not forbid confronting a defendant with the certainty that, if he or she proceeds to trial, the sentence will be greater than if he or she had pleaded guilty. In contrast to its earlier holding in *Jackson*, the *Chaffin* Court concluded that even if a plea offer would have a "discouraging effect" on the defendant's assertion of his trial rights, the imposition of these "difficult choices" was an inherent attribute of the process by which plea bargains are tolerated and encouraged. *Id.* at 30-31.

This trend away from *Jackson's* central premise continued in *Bordenkircher v. Hayes*, 434 U.S. 357 (1978), a non-capital case, in which the prosecutor threatened to indict the defendant as a habitual offender -- as a consequence of which he faced a mandatory life sentence -- unless he agreed to plead guilty to the original charge and accept a five-year sentence. *Id.* at 358-59. The Court found no constitutional violation in the prosecutor's use of the habitual offender sentencing enhancement as leverage to obtain a guilty plea. *Id.* at 365. Rather, it held yet again that while confronting a defendant with the risk of more severe punishment if he proceeds to trial "may have a 'discouraging effect on the defendant's assertion of his trial rights,'" this result was a natural consequence of plea bargaining, and was therefore constitutionally permissible. *Id.* at 364 (quoting *Chaffin v. Stynchcombe*, 412 U.S. at 31).

Corbitt v. New Jersey, 439 U.S. 212 (1978), came close to an express repudiation of *Jackson*. The majority of the Court applied the legal principles outlined in *Bordenkircher v. Hayes*, to uphold a sentencing scheme that appeared to resemble the one presented in *Jackson*. The New Jersey statute at issue in *Corbitt* provided for different punishment for defendants convicted at a jury trial and for those convicted on a non vult or a nolo contendere plea. *Id.* at 215. In upholding this statute against a claim that it was unconstitutional under *Jackson*, the Court first acknowledged that the New Jersey statute, unlike the one in *Jackson*, did not provide for the possibility of a death sentence. But while the Court viewed this as a "material fact," it did not regard it as a dispositive one. *Corbitt*, 439 U.S. at 217.

What was dispositive, however, was the Court's conclusion, already articulated in *Brady*, *Chaffin*, and *Hayes*, that merely because a guilty plea structure might encourage a guilty plea and discourage a defendant from proceeding to trial, it was not unconstitutional. *Corbitt*, 439 U.S. at 219 n.9. As this Court had recognized in *Chaffin* and *Bordenkircher*, but ignored in *Jackson*, this type of pressure is a natural consequence of any system that allows plea bargaining:

> While confronting a defendant with the risk of more severe punishment clearly may have a discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices is an inevitable -- and permissible -- attribute of any legitimate system which tolerates and encourages the negotiation of pleas. It follows that, by tolerating and encouraging the negotiation of pleas, this Court has necessarily accepted as constitutionally legitimate the simple reality that the prosecutor's interest at the bargaining table is to persuade the defendant to forego his right to plead not guilty.

439 U.S. at 220-21 (citation, quotation marks, and brackets omitted). This approach led the three dissenting justices to conclude that "the holding in *Jackson*, though not specifically overruled, has been divorced from the rationale on which it rested." *Corbitt*, 439 U.S. at 229 (Justices Stevens, Brennan, and Marshall, dissenting).

Nor was the *Corbitt* Court troubled by the fact that the disparity of punishments available after a guilty plea and after a trial was legislatively created, rather than the fortuitous result of the plea bargaining process. The Court noted that just as a prosecutor may charge a defendant with the maximum level of offense and secure a conviction, despite the prosecutor's power to offer a reduced pleas, so too may the legislature "openly provide for the possibility of leniency in return for a plea." *Corbitt*, 439 U.S. at 224.

The New York statutes at issue do exactly what the *Corbitt* Court sanctioned. They provide for the possibility of leniency to a defendant who agrees to plead guilty. While they may not comport with *Jackson*, they comport with the many post-*Jackson* cases whose holdings cannot be reconciled with *Jackson*. Nonetheless, the New York Court of Appeals, believing that it was still bound to follow *Jackson*, while also questioning its continued validity, felt compelled to find those statutes unconstitutional. And it was that finding of unconstitutionality that led directly to the vacatur of Mateo's death sentence. (Appendix A at 10a, 12a, 13a).

This Court should now grant *certiorari* to make plain what subsequent cases have implicitly or explicitly recognized: that *Jackson* is no longer good law, and is incompatible with a criminal justice system that accepts plea bargaining as one of its fundamental components.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of *certiorari* to review the decision and judgment of the New York Court of Appeals.

Respectfully submitted,

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